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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,310	10/27/2000	William L. Reber	WL002	6204
34399 7590 10/27/2009 GARLICK HARRISON & MARKISON P.O. BOX 160727 AUSTIN, TX 78716-0727				
EXAMINER				
KARMIS, STEFANOS				
ART UNIT		PAPER NUMBER		
3693				
NOTIFICATION DATE		DELIVERY MODE		
10/27/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/698,310

Applicant(s)

REBER, WILLIAM L.

Examiner

STEFANOS KARMIS

Art Unit

3693

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date: 5/11/09
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11 August 2009 has been entered.

Status of Claims

2. Claims 1-32 are cancelled. Claims 33-58 are newly added. Claims 33-58 are under prosecution in this application.

Response to Arguments

3. Applicant's arguments with respect to claims 33-58 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 33-58 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claim 33, a proper process must be tied to another statutory class or transform underlying subject matter to a different state or thing (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876)). The particular machine or transformation test must involve meaningful limits and be more than insignificant "extra-solution" activity. Simply reciting a specific machine or a particular transformation of a specific article in an insignificant step, such as data gathering or outputting, is not sufficient to pass the test.

In claim 33, the claimed machines are used in steps such as data gathering or outputting. The steps of identifying the restaurant and facilitating at least one task are not tied to a machine and could be interpreted as being done by human interaction. For this reason, claim 33 fails to recite meaningful limits and is considered to be insignificant "extra-solution" activity. Independent claims 42 and 50 are rejected for similar reasons. Dependent claims 34-41, 43-49, and 51-58 fail to provide meaningful limits also. Therefore claims 33-58 stand rejected under 35 U.S.C. 101.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 33, 42, 50, 55, 56, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogasawara, U.S. Patent 6,512,919 in view of Slater et al. (hereinafter Slater) U.S. Patent 6,157,735.

Regarding independent claims 33, 42, and 50, Ogasawara teaches a method comprising:

capturing via a handheld cellular telephone and in response to actions of a user, a digital image (column 20, lines 17-67);

displaying the digital image to the user on a display device of the handheld cellular telephone (column 20, lines 17-67);

interacting with the user to select the digital image (column 20, lines 17-67);

transmitting the digital image from the handheld cellular telephone to a server system (column 20, lines 17-67 and column 22, lines 59 thru column 23, lines 30);

identifying an item in the digital image based on the recognition of the item, and not based on the recognition of an optical code (column 22, lines 59 thru column 23, lines 30);

retrieving information via a computer network, based on the identification (column 6, lines 42-61 and column 21, lines 24-35 and column 22, lines 59 thru column 23, lines 30 and column 23, lines 48-57);

displaying at least a portion of the item information on the handheld cellular telephone (column 6, lines 42-61 and column 21, lines 24-35 and column 22, lines 59 thru column 23, lines 30); and

facilitating at least one associated task based on the information, the at least one associated task including facilitating reservations (column 7, lines 13-25 and column 21, lines 36-53 and column 23, lines 48-57).

Ogasawara thus teaches the invention may be used for ticket or seat reservations and for food ordering. Ogasawara teaches that the invention can apply to an image having a distinct or identifiable shape or other visually identifiable characteristics (column 23, lines 11-31). Ogasawara fails to specifically teach a restaurant in the image. Slater teaches an image processing method in which a content identification identifies specific items in images (Abstract). Specifically, Slater teaches the identification of man-made objects, such as buildings (column 5, line 48 thru column 6, line 46). It would have been obvious to one of ordinary skill in the art to modify the teachings of Ogasawara for recognizing visually distinct shapes to include the teachings of Slater for recognizing buildings because it would provide for recognition of buildings having a distinct shape that the user has an interest in. This would allow for the teachings of Ogasawara for making seat reservations or obtaining tickets because the restaurant/venue would be recognized.

Claims 48 and 49, Ogasawara teaches obtaining images of real world products that are non-planar (column 20, lines 17-67 and column 23, lines 11-31). Slater teaches an image processing method in which a content identification identifies specific items in images/non-planar objects (Abstract and column 5, line 48 thru column 6, line 46). Specifically, Slater teaches the identification of man-made objects, such as buildings (column 5, line 48 thru column 6, line 46).

Claim 55, Ogasawara teaches wherein the at least one associated task includes ordering a ticket (column 23, lines 48-57).

Regarding claim 56, Ogasawara teaches wherein the at least one associated task includes ordering a ticket (column 23, lines 48-57). Ogasawara fails to teach the ticket is either pre-ordered for a later date or ordered for a current date. Official Notice is taken that an ordered ticket being pre-ordered for a later date or a current date is old and well known in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Ogasawara in view of Slater for ordering tickets to specify the date for the event because it is common for users to purchase tickets in advance for items like sports and concerts or other highly anticipated shows or to purchase tickets on the current data for items like movie tickets.

Claim 58, Ogasawara teaches wherein the at least one associated task includes placing a call to a person (column 19, lines 31 thru column 20, line 16).

8. Claims 34-41, 43-47, and 51-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogasawara, U.S. Patent 6,512,919 in view of Slater et al. (hereinafter Slater) U.S. Patent 6,157,735 in further view of Mault U.S. Publication No. 2003/0208409.

Regarding claims 34-38, 43-47, and 51, Ogasawara teaches that the invention can be used for ticket/seat reservations, food ordering, text/voice/video guidance applications, information inquiry and the like (column 23, lines 48-57). Ogasawara fails to teach the specifics of restaurant information that includes scheduling, food, transportation, visual, audio content/information. Mault teaches a portable computing device for displaying food and restaurant information (paragraph 0046 and 00071). Mault teaches that the PDA can visually display directions to the restaurant, ordering/food information (paragraph 0047 and 0089). The PDA also contains audio and speech recognition for communicating with the user (paragraphs 0009, 0014, 0089). It would have been obvious to a person of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Ogasawara in view of Slater for recognizing a restaurant and performing seat reservations and food ordering to include the teachings of Mault for providing restaurant information such as scheduling, food, transportation to a PDA or cellular phone because it provides users with access to information about the restaurant such as

nutritional information and location information which is helpful when ordering food and making the seat reservations as taught by Ogasawara.

Regarding claims 39-41 and 52-54 Ogasawara teaches capturing via a handheld cellular telephone and in response to actions of a user, a digital images and using the phone for ticket/seat reservations, food ordering, text/voice/video guidance applications, information inquiry and the like (column 23, lines 48-57 and column 20, lines 17-67). Ogasawara fails to teach that the at least one task includes a customized task that is also shared by other users. Mault teaches that the user of the PDA sends customized tasks from the PDA to the restaurant/weight-loss company/service provider (paragraph 0067, 0076, and 0098). Mault further teaches that the users customized food orders at various restaurants can be sent to other authorized users such as physicians, diet counselors, etc. (paragraph 0026). It would have been obvious to a person of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Ogasawara in view of Slater for recognizing a restaurant and performing seat reservations and food ordering to include the teachings of Mault for providing customized tasks to a service provider because it provides users with access to information desired by the user and specific to the users needs, which is useful in the restaurant environment where many users have dietary concerns and nutritional concerns.

9. Claims 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogasawara, U.S. Patent 6,512,919 in view of Slater et al. (hereinafter Slater) U.S. Patent 6,157,735 in view of Rhoads et al. (hereinafter Rhoads) U.S. Patent 6,947,571.

Regarding claim 57, Ogasawara fails to teach that the at least one associated task further includes: sending an email message. Rhoades teaches using a cellular phone to obtain data about a product by sending an email to the product manufacturer (column 31, lines 25-44). Therefore it would have been obvious to a person of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Ogasawara to include the teachings of Rhoads because a sending emails provides a communications means to send an receiving information about products desired by a customer.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEFANOS KARMIS whose telephone number is (571)272-6744. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Respectfully Submitted
/Stefanos Karmis/
Primary Examiner, Art Unit 3693
23 October 2009